

# CHAPTER 28 - Resolutions of Necessity (Appearance Information Sheets)

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## ARTICLE 1 - General

### Right to Appear Before CTC

Under the eminent domain law, a property owner whose property is to be considered for a Resolution of Necessity (RON) has the right to appear before the California Transportation Commission (CTC) to contest the resolution on any of the following grounds:

- Does public interest and necessity require the proposed project?
- Is the proposed project planned or located in the manner that will be most compatible with the greatest public good and the least private injury?
- Is the property sought to be condemned necessary for the proposed project?

In addition, a written offer to purchase must have been made to the owner of record.

### Requests for Appearance Need Study

Each year a number of property owners appear before the CTC to challenge the RON that will authorize acquisition of their property (generally at the rate of about one or two appearances per month). It usually presents a problem when property owners address issues or alternatives that Caltrans did not adequately consider during the project development process and the preparation preceding the RON. These omissions may cast doubt on the need for the property acquisition as proposed, and important projects may be unnecessarily delayed. Consequently, when the RON involves the appearance of the property owner before the CTC, Caltrans management must thoroughly weigh and explore the issues so that Caltrans' positions are fully justified.

### First and Second Level Reviews

To accomplish this thorough evaluation of issues, a first level review is held by the district; and if necessary, a second level review is held by a Condemnation Review Panel appointed in headquarters.

The procedures to carry out this process are discussed in detail in Article 2. The result is a recommendation to the Chief Engineer by the Condemnation Review Panel on whether to proceed with the securing of the RON.

## ARTICLE 2 - Procedures

In order to enhance the probability of obtaining timely authorization for these resolutions, the following procedures should be followed.

### **District Director Review**

When a property owner challenges a proposed RON and requests a hearing before the CTC, the District Director must personally review the facts, issues, and recommended Caltrans position. The review must include, but is not limited to, the following:

- The allegations raised and alternatives suggested by the property owner.
- Reasonable alternatives that might reduce or eliminate the parcel take.
- The recommended Caltrans position in the event that the CTC denies the RON and the parcel cannot be condemned.

### **First Level Review with Property Owner**

District Directors shall ensure that appropriate personnel work with the owner throughout the acquisition process in an effort to resolve the owner's concerns. The district's right of way and project development units must work in a cooperative manner during this process. When a property owner challenges adoption of a resolution, the District is responsible for conducting a first-level review meeting with the property owner to identify all issues and alternatives, and to determine if it is feasible to modify the design or schedule to effect resolution with the owner. This meeting is usually conducted by the District Director and the District Division Chief - Right of Way.

### **Draft Appearance Information Sheet and Fact Sheet**

If the property owner does not withdraw the Request for Appearance when the District completes the first-level review, and the District's recommendation is to proceed with the project, the District should notify the Design and Local Programs Program (DLPP), Attention: Appearance Request, within three working days after the first-level review meeting.

This notification will consist of a draft Appearance Information Sheet (AIS), approved and signed by the Project Manager, and a fact sheet. A copy of the notification should also be sent to the Program Manager, Right of Way Program. The date selected for presentation to the CTC is governed by the completeness of the District's initial notification and information submittal, whether or not the matter is to be evaluated by a Condemnation Review Panel, and the time required for the panel to perform its function in relation to the monthly cutoff date for submitting agenda items (with supporting documentation) to the CTC.

## **AIS and Fact Sheet Outline**

Appendix JJ contains an outline of the data and maps that are required for a draft AIS and fact sheet, which is prepared for each appearance. After being updated by DLPP the fact sheet is included in the CTC briefing book and the material in the draft AIS is used in the condemnation review panel report and summary which is also included in the CTC briefing book. The actual presentation to the Commission will include a verbal explanation using this material and wall maps. It is essential that the draft AIS be complete enough to allow the Program Managers of both Right of Way Program and DLPP to decide if the Request for Appearance should be forwarded to a Condemnation Review Panel.

## **DLPP Review**

When DLPP receives the draft AIS, the Project Development (PD) Coordinator will meet with responsible District design staff and management to obtain an adequate understanding of the project and its impacts on subject properties.

## **Action Options by Program Manager, DLPP**

The DLPP Program Manager, after consulting with the Program Manager, Right of Way Program, may take the following actions:

- Refer request to the Condemnation Review Panel, to develop a recommended course of action for the Chief Engineer, or
- Refer project back to the District for additional design studies or design modifications, or
- Forward the request to the CTC for action.

## **Condemnation Review Panel**

If the Request for Appearance is referred to a Condemnation Review Panel, panel members will be selected from the list approved by the Chief Engineer. The Condemnation Review Panel shall consist of one or more Caltrans managers having career experiences in law, engineering, and right of way. The Right of Way panel member will act as panel chairperson and will designate a Right of Way staff person to serve as secretary to the panel.

## **Second Level Review Meeting Arrangements**

The secretary for the Condemnation Review Panel will:

- Notify the panel members of their assignment and provide them with (1) the owner's letter that requested a CTC appearance, and (2) the District's draft AIS.
- Arrange through District Right of Way for a second level review meeting place and time that is convenient for the owner and all

attendees. The facility should be suitable for a formal meeting. District Right of Way staff will be expected to make necessary arrangements by phone and to confirm these, in writing, to the property owner and the panel members. An expenditure authorization should be provided by the District to capture charges to the project.

- Prior to the panel's second level review meeting with the owner, arrange for a panel field review of the proposed acquisition. Representatives from District Design and Right of Way may be requested to attend the field review to provide answers to questions about project details.

### **Stenographic Reporter**

The second level review meeting is a relatively formal process which sometimes involves the preparation of a transcript by a stenographic reporter. If it is felt by the panel that a written transcript will be needed for a particular meeting, the Legal Division member of the Panel will arrange for a stenographic reporter to attend and to prepare the transcript.

### **Panel Participants**

The second level review meeting will be attended by the owner or his representative, or both, the panel members, the panel secretary, a representative from District Design, and a representative from District Right of Way. For locally-funded projects or consultant-designed projects, the District may invite additional representatives to the second level review meeting to provide detailed information.

### **Inform Owner Prior to Meeting**

Prior to the second level review meeting, the District should inform the owner of the specific details of the meeting procedures so the owner can arrange for engineering or legal assistance if desired. District representation at the meeting should be minimized and potential expert presenters should be kept on standby.

### **Meeting Procedures**

The panel chairperson will begin the second level review meeting by explaining the purpose of the meeting and the procedures to be followed. District staff will describe the project using suitable maps and plan exhibits. Owners will be asked to present their concerns about the project or the proposed acquisition as presented, along with any suggestions they may have to reduce or mitigate project impacts.

### **Panel Discussion**

After all information has been gathered, the owner, District staff, and the stenographic reporter, if present, will be excused. The panel will discuss the available information in an effort to develop a recommendation for the Chief Engineer. In some instances, the panel may need to gather additional information from the District or other sources. They may also refer suggestions by the owner to the District for evaluation. The panel may meet again upon completion of this evaluation to reach a decision.

## **Draft Panel Report with Recommendation**

The panel secretary will prepare a draft panel report with recommendation. The report will include: a summary description of the project and the State's acquisition from the owner's property; a listing of the issues and recommendations raised by the owner; the panel's consideration of the issues and recommendations of the owner; the panel's findings; and the panel's recommendation. The draft report and a copy of the second level review meeting transcript should be furnished to the panel members for review and comment.

## **Final AIS**

The final AIS is prepared by DLPP. The panel's final report is attached as a supplement. These documents will be submitted to the Chief Engineer to decide if Caltrans is ready to request a RON from the CTC.

## **Meeting Scheduling**

If the Chief Engineer decides to request CTC approval of the RON, the fact sheet, a chronology, and maps, and the Condemnation Review panel's report will be furnished to the Programming Program for inclusion in the CTC briefing book by the Right of Way Program prior to the due date for CTC book items.

## **Owner Notification by Right of Way Program**

The Right of Way Program will send the owner a letter, notifying them of the date, time, and location to appear before the CTC. Copies of the panel report and the second level review meeting transcript, if prepared, will be furnished to the owner with the notification. Copies of the panel report are also furnished to the District Division Chief - Right of Way.

## **District Participation**

Depending on the case at hand, District representatives or other resource people may be asked to assist in presentations to the CTC. The Project Manager will be responsible for initial preparation of draft wall maps or displays; DLPP will contact the Project Manager regarding any additional needs.

## **District Division Chiefs' Involvement**

The District Division Chiefs for Design and Right of Way are to be personally involved in the preparation of the AIS and any required backup material. The information must be up-to-date, complete and factual.

## **Importance of This Process**

Although this process usually occurs well after most required project approvals have been obtained, its importance cannot be minimized. Several projects have been delayed or modified as a result of property owner challenges. A careful and complete documentation of project need and design throughout the entire project development process is essential.